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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/714,732	11/17/2003	Arup Acharya	YOR920030449US1 (8728-854)	4665
4665 7590 10/16/2008 F. CHAU & ASSOCIATES, LLC 130 WOODBURY ROAD WOODBURY, NY 11797				
EXAMINER MEW, KEVIN D				
ART UNIT 2416		PAPER NUMBER		
MAIL DATE 10/16/2008		DELIVERY MODE PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No. 10/714,732	Applicant(s) ACHARYA ET AL.
Examiner Kevin Mew	Art Unit 2416

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 11 September 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.
NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-3, 5-8 and 10-13.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Chi H Pham/
Supervisory Patent Examiner, Art Unit 2416
10/10/08

Applicant argued on page 2, last paragraph of the Remarks that Bremier-Barr does not teach or suggest "a plurality of queues associated to the message types, wherein the messages are placed in one of the plurality of queues according to a classification of the message and leaked from at least one of the queues for enforcing a message overload protection for the associated message type," examiner respectfully disagrees. First, the limitations of "a plurality of queues associated to the message types, wherein the messages are placed in one of the plurality of queues according to a classification of the message" have already been disclosed by the primary reference Van Dyke (see page 3 of the Final Office action, which refers to paragraphs 0021-0023, 0025 of Van Dyke). Second, Bremier-Barr teaches leaky-bucket mechanism in paragraph 0013 and further explains in paragraph 0118 that part of leaky-bucket mechanism comprises controlling the flow of packets entering a device and in the event that a packet enters a device and a token does not exist in the bucket, the packet may be dropped. This means that the packets are leaked or dropped from the device for controlling the flow of packets entering the device, which teaches "messages are leaked from at least one of the queues for enforcing a message overload protection for the associated message type."

Therefore, Claims 1-2, 6-7, 11 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Van Dyke et al. (US Publication 2004/0153497 A1) in view of Bremier-Barr et al. (US Publication 2003/0076848 A1), claim 3, 8 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Van Dyke et al. in view of in view of Bremier-Barr et al., and in further view of Horvath et al. (US Publication 2005/0102421 A1), claims 5, 10 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Van Dyke et al. in view of Bremier-Barr et al., and in further view of D'Souza et al. (US Publication 2004/0236966 A1), and claims 12, 13 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Van Dyke et al. (US Publication 2004/0153497 A 1) in view of Bremier-Barr et al. (US Publication 2003/0076848 A1), and in further view of Zolnowsky (USP 5,826,081).